

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2432 OF 2002

Dr.(Mrs.) Geeta Tonwar

...

...Petitioner

v/s.

S.B.Somani, Chairman & Managing Trustee,
 Shri Hazarilal Somani Memorial Trust & Ors.

...Respondents

...

Ms.Panthi Desai i/b M.P.Vashi & Associates for the Petitioner.
 Mr.V.N.Tayade i/b Piyush Shah for the Respondents Nos. 1 and 2.
 Mr.A.R.Metkari, AGP for the Respondent No.3-State.

...

CORAM : A.A. SAYED, J.

DATED : 27 SEPTEMBER 2017.

ORDER:

The challenge in this Petition filed under Article 227 of the Constitution of India is to the judgment and order dated 9 January 2002 passed by the School Tribunal, Mumbai. By the impugned order, the Appeal filed by the Petitioner/original Appellant under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short) was partly allowed and the termination order dated 10 July 1999 was quashed and set aside. The operative portion of the impugned judgment and order reads as under:

"O R D E R

1. The Appeal filed by the Appellant bearing No.MUM/86/1999 is partly allowed.
2. The order of discharge termination/dismissal dated 10-7-1999 is quashed and set aside.
3. Instead of reinstating the Appellant, the Respondent No.1 is directed to pay to the Appellant an amount equivalent to twelve month's emoluments by way of compensation in lieu of reinstatement as provided under section 11(2) of M.E.P.S. Act, 1977.
4. Parties to bear their own cost."

2. The case of the Petitioner before the School Tribunal, in a nutshell, was as follows:

She was appointed as Assistant Teacher in the Secondary School run by the Respondent-Management with effect from 30-08-1983. After completion of her B.Ed. she was issued another appointment order dated 5-01-1986 and was confirmed as a Teacher in the Secondary Section of the School. By letter dated 14-02-1998 addressed to the Principal of the School, she requested for leave from 2-03-1998 to 30-04-1998 as she wanted to go to U.S.A. on the request of her son who was studying for his B.S. Degree at Purdue University and his final examination was scheduled in the first week of May, 1998. Her son was finding it difficult to cope up with his studies and work schedule during the semester. By reply dated

26-02-1998, the Principal informed her that keeping in mind various facts and figures and several lapses on her part, it was not possible to permit her such long leave from 02-03-1998 and 30-04-1998. She had no option but to leave the country on 01-03-1998. In her absence a show cause notice was issued by the Principal on the ground that she had disobeyed the order of the Management and proceeded on leave without sanction of the Management, which was misconduct on her part. Many false allegations were made in the show cause notice. On 28-05-1998, she received a charge sheet. She accordingly replied to the charge sheet by her letter dated 10-06-1998. The Principal-Management did not accept her explanation and informed her that it was decided to suspend her and to hold an inquiry in respect of the charge sheet dated 28-05-1998 and Inquiry Officer was appointed. She had stated before the Inquiry Committee that she was working in the school from August 1983 and though she had served almost 15 years she had taken leave only when absolutely necessary. It is only between 1995-96 she was compelled to take leave to attend the well being of her children. In 1996-97 she had taken only 5 days leave due to personal reason. She applied for leave for about 6 weeks from 03-03-1997 to 17-04-1997 also, which was approved by the school. However, she voluntarily had joined the school on 25-03-1997, after she realized that she would not be able to go to the USA to attend to her son

during his time of need on account of Delta Airlines not giving a confirmed reservation, and she had cancelled her going and she resumed duties. During the period between June 1997 till February 1998, she took only 5 days casual leave. The constitution of the Inquiry Committee itself was illegal, inter alia, for the reason that the Petitioner's nominee was not included in the Committee and the whole inquiry was against the provisions of Rules 36 and 37 of the MEPS Rules.

3. The Respondent-Management had filed a Reply before the School Tribunal. They have, inter alia, pointed out that despite the fact that her leave was not sanctioned/granted, the Petitioner had stopped reporting for duties from 02-03-1998 in total defiance of the intimation given to her vide letter dated 20-02-1998. It is contended that it is prerogative and discretion of any employer whether to grant leave or not and leave cannot be taken as a matter of right. There was grave and serious misconduct by the Petitioner and hence, departmental proceedings were initiated and she was found guilty of the charges levelled against her. Since the Petitioner had encashed the cheque given to her in lieu of notice pay, she cannot make a grievance about termination.

4. I have heard learned Counsel for the parties. The learned Counsel for the Petitioner has relied upon the following judgments:

- i) **Leelaram s/o Balchand Dhanole v/s Presiding Officer, School Tribunal, Nagpur, 2014(5) Mh.L.J. 829;**
- ii) **Pralhad Kishor Bondre v/s. Ramkrishna Shikshan Prasarak Sansthan, Lonar, Dist.Buldana and ors. 2011 (1) Mh.L.J. 166;**
- iii) **Premlaxmi and Co. Mumbai v/s. Ingersoll Rand (India) Ltd. Bangalore and anr. 2011 (1) Mh.L.J. 178;**
- iv) **Satish Balkrishna Mule v/s. M.V. Chaskadbi, Chairman, Shri Samarth Vidya Prasarak Mandal, 1988 SCC OnLine Bom 441;**
- v) **Omprakash Shrawan Deshpande and anr. v/s. Presiding Officer, School Tribunal and ors. 2005 (3) L.L.N. 439.**

5. The School Tribunal by the impugned order held that the Inquiry Committee was defective and hence illegal. In paragraphs 30 and 31, the Tribunal held as follows:

“30. Appellant, has stated in her oral examination at page No.86 of appeal memo in para 2 that, she has proceeded on leave inspite of the fact that she was aware that her leave was not sanctioned and still she proceeded on leave. Similarly, the appellant also admitted in cross-examination that she has availed

leave in the year 1997 for going to USA but did not go to USA. Further, she has stated that she has passed M.A.Examination in 1997 without the knowledge of the Respondents. She has again stated in cross-examination that she has been correctly chargesheeted. Pleading about her leave in paras 7,8 and 9 of the appeal memo also corroborates her statement.

Rule No.16 of the MEPS Act provides that granting of leave is a discretionary and cannot be demanded by as a matter of right. Explanation 32 of Rule 16 also provides that an employee cannot resume duties before expiry of the leave.

As stated above, appellant has accepted the discharge of the services by accepting the notice pay. This act of acceptance and encashing of the cheque of notice pay by the appellant it appears that she has voluntarily on her own accord accepted the order of discharge of her services.

It is here mentioned that as per statement of appellant in the enquiry proceedings and pleadings in appeal memo, it is seen that the appellant was working as Sanskrit Teacher. It is seen from the written statement of Respondent No.1 that there are hardly three or four students opting for Sanskrit. Thus, it has become necessary for the Respondents to abolish the post of Sanskrit teacher in the school and the post of Sanskrit teacher is stand abolished and the concerned authorities has been duly informed. Moreover, the appellant in her statement (Exh.M, page 40 of appeal memo) and also categorically stated in appeal memo that she does not require a job and she is not going for job for the sake of money.

31. Thus, considering the admission of appellant acceptance of voluntarily discharge of service and encashing the notice pay, she does not require the job she proceeded on long leave without permission for going abroad at the crucial time of examination of S.S.C. students, there is no stigma mentioned in the alleged termination order and taking into account the charges levelled against the appellant, principles and ratio laid down in cited rulings by Respondents, she has not been reinstated in the services of Respondents School inspite, the termination of the appellant is liable to be set aside and instead of reinstating the appellant in the Respondent School, she is entitled for monetary reliefs as provided under the provision of sub-clause (3) of sub-section 2 of Section 11 of MEPS Act.”

6. Inasmuch as the School Tribunal by the impugned order has set aside the termination of the Petitioner and the Respondent-Management has not challenged the impugned order, the judgments cited on behalf of the Petitioner on the aspect of termination need not be gone into. The only issue which is required to be considered is with regard to directions contained in paragraph 32 of the impugned order, whereby instead of reinstatement the Petitioner was granted a monetary relief by way of compensation.

7. Section 11 of the MEPS Act reads thus:

“11. Powers of Tribunal to give appropriate reliefs and directions. - (1) On receipt of an appeal, where the Tribunal, after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in section 9 or is not maintainable by it, or there is no sufficient ground for interfering with the order of the Management it may dismiss the appeal.

(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-

- (a) to reinstate the employee on the same post or on a lower post as it may specify;*
- (b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;*
- (c) to give arrears of emoluments to the employee for such period as it may specify;*
- (d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;*

(e) where it is decided not to reinstate the employee or in any other appropriate case, to give to the employee twelve months' salary (pay and allowances, if any) if he has been in the service of the school for ten years or more and six months' salary (pay and allowances, if any) if he has been in service of the school for less than ten years, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.

(3)

(4)"

8. Thus, section 11 clearly confers a discretion on the School Tribunal in a given case not to reinstate the employee and instead grant compensation. In the present case, it is seen that the Petitioner at the crucial time of the examination of the SSC students despite her leave not being sanctioned, has proceeded to USA.

9. I am in agreement with the view of the School Tribunal that the Petitioner had disobeyed the order of the Management and proceeded on

leave without sanction of the Management. The conduct of the Petitioner was clearly irresponsible in proceeding to USA, particularly considering the fact it was at the crucial time when the examinations of SSC were to ensue and despite her leave not being sanctioned. Pertinently, in paragraph 14 of her Appeal Memo she herself has stated that she was not teaching for the sake of job or money. Perhaps, that may be the reason of her casual approach in respect of her employment. I do not find that the discretion exercised by the School Tribunal to grant her compensation instead of reinstatement can be said to be unjustifiable. The School Tribunal has after weighing the facts and circumstances of the case and the conduct of the Petitioner given cogent reasons for granting compensation in lieu of reinstatement relying upon section 11 (2)(e) of the MEPS Act. The judgment of the Division Bench in the case of **Leelaram s/o Balchand Dhanole** (supra) would not apply in the present case. In that case the School Tribunal had granted compensation instead of reinstatement mechanically and without assigning any reasons. The other judgments cited on behalf of the Petitioner are distinguishable on facts. Even assuming the Petitioner was entitled to backwages apart from compensation, as sought to be suggested, it is required to be noted that the Petitioner has not pleaded before the School Tribunal or filed any Affidavit either before the School Tribunal or even before this Court that she was not gainfully employed

elsewhere. In these circumstances, the Petitioner would not be entitled to backwages in view of the law laid down by the Supreme Court in paragraph 38 in the case of **Deepali Gundu Surwase vs. Kranit Junior Adhyapak Mahavidyalaya and ors**, (2013) 10 SCC 324.

10. For the aforesaid reasons, no interference is warranted with the impugned order. The Petition is dismissed. No order as to costs.

(A.A.SAYED, J.)